

3. Defendant TIM CRONIN is a natural person residing in Missouri and has been served. Defendant TIM CRONIN has filed a Motion to Dismiss in this matter.

II.

VENUE

4. Jurisdiction in this Court is founded upon 28 U.S.C. Section 1332(a)(1). 5. Venue of this action is proper in this Court under 28 U.S.C. Section 1391(a)(2) because a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this judicial district.

IV.

**MATERIAL PREDICATE FACTS APPLICABLE TO
ALL CAUSES OF ACTION**

6. Plaintiff is a wholesale distributor of sportswear products and Defendant HILTON is one of its vendors. At Staton's office in Dallas, Texas near the end of 2005, the parties met to discuss agreements regarding business between the parties. At that meeting, and in subsequent meetings and over the telephone, the topic of year end returns was discussed. Plaintiff Staton made it clear at that meeting and at all times subsequent that Staton would not purchase HILTON product unless it could return unsold product. Defendant Tim CRONIN agreed to Staton's right to return HILTON product, and based on his agreement, Staton proceeded forward and ordered HILTON Product. This agreement was never withdrawn, qualified, or restricted in any manner by Defendant HILTON, any HILTON representative, or Defendant CRONIN. Upon information and belief, Defendant CRONIN did not ever intend to accept return of HILTON product or made the statement without regard as to whether product returns would be accepted and made the statement to induce Plaintiff to purchase HILTON product.

7. Additionally, through language contained on Plaintiff's purchase orders, Plaintiff has purchased all goods from Defendant HILTON on a "purchase and return" basis and at all

times has retained its right to return unsold product. Plaintiff's purchase orders contain the following language, prominently displayed near the top of the first page in full sized font:

Acceptance of this order constitutes your agreement that Staton accepts this merchandise on a "sale or return" basis. U.C.C. Section 2.327.

A sample of this language on a purchase order addressed to Defendant HILTON is attached hereto as Exhibit "A."

8. This language as contained on purchase orders sent out by Plaintiff to Defendant HILTON accurately reflects its agreement with Defendant HILTON. Further, Defendants have never objected to this language contained in the purchase orders, and Plaintiff has relied on Defendants' agreement in its dealings with Defendants and in making orders of HILTON products.

9. Defendants have never brought up their opposition to Plaintiff's return of product to Defendants have accepted all purchase orders containing this language. On or about October 2, 2006 Plaintiff attempted to return HILTON product pursuant to the above-referenced contractual language. Plaintiff provided Defendants with a list of the items to be returned, however, Defendants without prior warning, advised that they would not be accepting returns.

10. Plaintiff has engaged in good faith efforts to liquidate HILTON product on hand, and thereby reduce the amount of returned product. As of the filing of this case, Plaintiff seeks to return HILTON product in the approximate amount of \$207,099.30. This amount continues to decrease as HILTON product is sold and Plaintiff continues to attempt to sell HILTON product to mitigate its damages.

IV.

CAUSE OF ACTION

BREACH OF CONTRACT AND SUIT FOR SPECIFIC PERFORMANCE

11. Plaintiff hereby incorporates by reference the allegations contained above and incorporates them herein by reference as if fully set forth.

12. Defendant HILTON breached the Contract between the parties resulting in actual and consequential damages to Plaintiff, including but not limited to, property taxes paid on the items that remain in Plaintiff's warehouse(s), loss of use of space in connection with the storage of HILTON merchandise, and loss of refund for returned items to Plaintiff's account as well as interest on bank debt related to HILTON products.

13. On October 2, 2006, and at times subsequent, Plaintiff has demanded that HILTON accept the above-referenced items for return, but all such requests have been denied. By reason thereof, Plaintiff has employed the undersigned attorneys to prosecute this action and has agreed to pay a reasonable attorney's fee for his services. Accordingly, pursuant to Tex. Civ. Prac. & Rem. Code Section 38.001 et seq., Plaintiff sues Defendant HILTON for the reasonable attorney fees incurred or to be incurred by Plaintiff in connection with the prosecution of this cause or the successful defense or prosecution of any appeals.

14. Plaintiff sues for specific performance such that HILTON shall be required to accept the return of the aforesaid items and issue an appropriate payment to Plaintiff, together with all other damages as set forth above.

FRAUD

15. Plaintiff would once again reurge the factual allegations contained above as if fully set forth herein. Upon information and belief, Defendant TIM CRONIN is president of

Defendant HILTON and, as such, was the central figure in the fraudulent activity alleged. Defendant TIM CRONIN took steps and committed overt acts before the fact, specifically in meetings which took place at Staton's facilities in Dallas, Texas near the end of 2005 and in telephone conferences, in an effort to induce Plaintiff to purchase HILTON product when they would not otherwise have done so. Upon information and belief, Defendant CRONIN did not ever intend to accept return of HILTON product or made the statement without regard as to whether product returns would be accepted. The intent of these actions was to induce Plaintiff to purchase HILTON products when they would otherwise have chosen not to do so, and the effect of these actions were that Plaintiff did rely on Defendant CRONIN's false statements in ordering HILTON product when they would not have done so if they had known that Defendant CRONIN did not intend to allow Plaintiff to return such product. Defendant committed overt acts after the fact in wrongfully denying (or having others do so on his behalf) valid agreements with Plaintiff as well as, upon information and belief, alleging contemporaneous oral agreements in an effort to misrepresent the actual agreements between the parties to Defendants' advantage, to induce Plaintiff to forgo its right to return the product, and to create a non-meritorious defense to Plaintiff's valid claims.

16. Plaintiff hereby sues Defendant TIM CRONIN for actual and consequential damages to Plaintiff caused by Defendant's fraudulent conduct, including but not limited to, property taxes paid on the items that remain in Plaintiff's warehouse(s), loss of use of space in connection with the storage of HILTON merchandise, and loss of refund for returned items to Plaintiff's account, interest on bank debt related to HILTON products as well as the reasonable attorney fees incurred or to be incurred by Plaintiff in connection with the prosecution of this cause or the successful defense or prosecution of any appeals. Plaintiff further sues for exemplary damages due to Defendant's Fraudulent conduct.

V.
DAMAGES

17. As a direct and proximate cause of the actions of Defendants as set out in detail above, Plaintiff has been damaged in an amount in excess of the minimum jurisdiction of this Court.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff respectfully prays of this Honorable Court that Defendants referenced herein be served with process and compelled to make an appearance herein; Plaintiff recover from Defendants relief as set forth above, jointly and severally, together with costs of court; pre-judgment interest from the date of the loss until the date recovery is made; post-judgment interest from the date of any Court judgment which might hereinafter be obtained until the date of actual payment; exemplary damages due to fraud; and any and all other relief, both general or specific, at law or in equity, to which Plaintiff may otherwise show itself justly entitled.

Respectfully Submitted,

LAW OFFICES OF CHRISTOPHER McCaffrey

BY: 

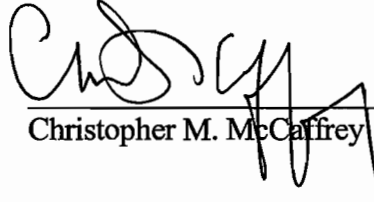
Christopher M. McCaffrey
State Bar No. 13336725

14275 Welch Road
Dallas, Texas 75244
Tel: (972) 448-3081
FAX: (972) 448-3082

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this 28th day of March, 2007, a true and correct copy of the above and foregoing document was sent via electronic and hand delivery to Larry W. Johnson, Cowles & Thompson, P.C., 901 Main Street, Suite 4000, Dallas, Texas 75202.



Christopher M. McCaffrey

EXHIBIT “A”

STATON WHOLESALE
P.O. BOX 801309
DALLAS, TX 75380

009270

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106 opening orders

-----VENDOR-----	*-----SHIP TO-----*
* HILTON APPAREL *	* STATON WHOLESALE *
* * *	* 3791 KNIGHT ROAD *
* 1859 BOWLES AVE *	* MEMPHIS TN 38118 *
* FENTON MO 63026 *	* * *
-----	*-----*

<u>P/O DATE</u> *	<u>VENDOR</u> *	<u>SHIP VIA</u> *	<u>FOB</u> *	<u>TERMS</u> *	<u>SHIP DATE</u>
10/25/05 *	9027 *			N90 *	1/02/06 - 1/02/06

<u>ORDER PLACED WITH</u>	<u>BUYER NAME</u>	<u>PHONE</u>	<u>VEN. ORD#</u>
RONNIE WILLIAMS	JENNIFERM	972-448-3000	

Acceptance of this order constitutes your agreement that Staton accepts this merchandise on a "sale or return" basis. U.C.C. Section 2.327

* OUR *	* VENDOR *	* U/M *	* QUANTITY *	* UNIT PRICE *	* AMOUNT *
* ITEM# / DESC *	* ITEM# *				
SZ01 GO S		DZ	2	209.7600	419.52
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 GO M		DZ	4	209.7600	839.04
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 GO L		DZ	8	209.7600	1,678.08
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 GO XL		DZ	8	209.7600	1,678.08
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 GO XXL		DZ	4	238.2000	952.80
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 GO 3XL		DZ	2	238.2000	476.40
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 RD S		DZ	6	209.7600	1,258.56
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 RD M		DZ	10	209.7600	2,097.60
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 RD L		DZ	20	209.7600	4,195.20
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 RD XL		DZ	18	209.7600	3,775.68
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 RD XXL		DZ	8	238.2000	1,905.60
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 RD 3XL		DZ	4	238.2000	952.80
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 RY S		DZ	4	209.7600	839.04
(H42) PIT CREW TWILL W/V STYLIN					
SZ01 RY M		DZ	6	209.7600	1,258.56
(H42) PIT CREW TWILL W/V STYLIN					

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* ITEM#	OUR / DESC	* VENDOR	ITEM#	* U/M	QUANTITY	* UNIT PRICE	* AMOUNT
SZ01	RY L			DZ	12	209.7600	2,517.12
	(H42) PIT CREW TWILL W/V			STYLIN			
SZ01	RY XL			DZ	10	209.7600	2,097.60
	(H42) PIT CREW TWILL W/V			STYLIN			
SZ01	RY XXL			DZ	6	238.2000	1,429.20
	(H42) PIT CREW TWILL W/V			STYLIN			
SZ01	RY 3XL			DZ	2	238.2000	476.40
	(H42) PIT CREW TWILL W/V			STYLIN			
	STYLE TOTALS				134		28,847.28
SZ02	GO S			DZ	4	175.5600	702.24
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GO M			DZ	4	175.5600	702.24
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GO L			DZ	8	175.5600	1,404.48
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GO XL			DZ	8	175.5600	1,404.48
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GO XXL			DZ	4	204.0600	816.24
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GO 3XL			DZ	2	204.0600	408.12
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GR S			DZ	2	175.5600	351.12
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GR M			DZ	2	175.5600	351.12
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GR L			DZ	6	175.5600	1,053.36
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GR XL			DZ	4	175.5600	702.24
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GR XXL			DZ	2	204.0600	408.12
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	GR 3XL			DZ	2	204.0600	408.12
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	OR S			DZ	2	175.5600	351.12
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	OR M			DZ	4	175.5600	702.24
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	OR L			DZ	6	175.5600	1,053.36
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	OR XL			DZ	4	175.5600	702.24
	(CYC) CYCLONE TWILL COLOR			BLOCK			
SZ02	OR XXL			DZ	2	204.0600	408.12
	(CYC) CYCLONE TWILL COLOR			BLOCK			

STATON WHOLESALE
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DALLAS, TX 75380

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* * ITEM#	OUR / DESC	* * VENDOR ITEM#	* * U/M	QUANTITY	* * UNIT PRICE	* * AMOUNT
SZ02	OR 3XL (CYC)CYCLONE TWILL COLOR BLOCK		DZ	2	204.0600	408.12
SZ02	RD S (CYC)CYCLONE TWILL COLOR BLOCK		DZ	6	175.5600	1,053.36
SZ02	RD M (CYC)CYCLONE TWILL COLOR BLOCK		DZ	10	175.5600	1,755.60
SZ02	RD L (CYC)CYCLONE TWILL COLOR BLOCK		DZ	20	175.5600	3,511.20
SZ02	RD XL (CYC)CYCLONE TWILL COLOR BLOCK		DZ	18	175.5600	3,160.08
SZ02	RD XXL (CYC)CYCLONE TWILL COLOR BLOCK		DZ	8	204.0600	1,632.48
SZ02	RD 3XL (CYC)CYCLONE TWILL COLOR BLOCK		DZ	4	204.0600	816.24
SZ02	RY S (CYC)CYCLONE TWILL COLOR BLOCK		DZ	4	175.5600	702.24
SZ02	RY M (CYC)CYCLONE TWILL COLOR BLOCK		DZ	6	175.5600	1,053.36
SZ02	RY L (CYC)CYCLONE TWILL COLOR BLOCK		DZ	12	175.5600	2,106.72
SZ02	RY XL (CYC)CYCLONE TWILL COLOR BLOCK		DZ	10	175.5600	1,755.60
SZ02	RY XXL (CYC)CYCLONE TWILL COLOR BLOCK		DZ	6	204.0600	1,224.36
SZ02	RY 3XL (CYC)CYCLONE TWILL COLOR BLOCK		DZ	2	204.0600	408.12
	STYLE TOTALS			174		31,516.44
SZ03	GO S (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	239.9700	479.94
SZ03	GO M (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	239.9700	479.94
SZ03	GO L (AX)AXLE COLOR BLOCK WITH STRP		DZ	4	239.9700	959.88
SZ03	GO XL (AX)AXLE COLOR BLOCK WITH STRP		DZ	4	239.9700	959.88
SZ03	GO XXL (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	274.1700	548.34
SZ03	GO 3XL (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	274.1700	548.34
SZ03	RD S (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	239.9700	479.94
SZ03	RD M (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	239.9700	479.94

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* * ITEM#	OUR / DESC	* * VENDOR ITEM#	* * U/M	* * QUANTITY	* * UNIT PRICE	* * AMOUNT
SZ03	RD L (AX)AXLE COLOR BLOCK WITH STRP		DZ	6	239.9700	1,439.82
SZ03	RD XL (AX)AXLE COLOR BLOCK WITH STRP		DZ	4	239.9700	959.88
SZ03	RD XXL (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	274.1700	548.34
SZ03	RD 3XL (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	274.1700	548.34
SZ03	RY S (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	239.9700	479.94
SZ03	RY M (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	239.9700	479.94
SZ03	RY L (AX)AXLE COLOR BLOCK WITH STRP		DZ	4	239.9700	959.88
SZ03	RY XL (AX)AXLE COLOR BLOCK WITH STRP		DZ	4	239.9700	959.88
SZ03	RY XXL (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	239.9700	479.94
SZ03	RY 3XL (AX)AXLE COLOR BLOCK WITH STRP		DZ	2	274.1700	548.34
	STYLE TOTALS			50		12,340.50
	P.O. TOTALS			358		72,704.22